

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

AGA Medical Corp.,

Plaintiff,

No. 0:10-cv-03734-JNE-JSM

V.

W. L. Gore & Associates, Inc.,

Defendant.

**DECLARATION OF PETER M. KOHLHEPP IN SUPPORT OF AGA’S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Peter M. Kohlhepp, hereby declare as follows:

1. I am an attorney with the law firm of Carlson, Caspers, Vandenburg, Lindquist & Schuman, P.A., counsel for plaintiff AGA Medical Corporation (“AGA”) in the above-captioned matter. This declaration is submitted on behalf of AGA in support of its Motion to Partial Summary Judgment. This declaration is made on my own personal knowledge, except as otherwise indicated.

2. Attached hereto as **Exhibit 1** is a true and correct copy of United States Patent No. 5,944,738 (“the ’738 patent”).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the September 9, 2003 New York Times profile article entitled “At 79, a Pioneer of Heart Devices Is Not About to Quit Tinkering,” produced by AGA as AGA\_GORE0443308–AGA\_GORE00443311.

4. Attached hereto as **Exhibit 3** is a true and correct copy of United States Patent No. 5,725,552 (“the ’552 patent”).

5. Attached hereto as **Exhibit 4** is a true and correct copy of the February 15, 2013 Expert Report of Professor Charles E. Mullins (designated as Confidential – Outside Attorneys’ Eyes Only by AGA), which is FILED UNDER SEAL.

6. Attached hereto as **Exhibit 5** is a true and correct copy of the March 4, 2013 deposition transcript of Alexander J. Javois, M.D. (designated as Confidential-Outside Attorneys’ Eyes Only by W.L. Gore & Associates, Inc. (“Gore”)), which is FILED UNDER SEAL.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the March 6, 2013 deposition transcript of Charles E. Mullins, M.D.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the March 5, 2013 deposition transcript of Alexander J. Javois, M.D. (designated as Confidential-Outside Attorneys’ Eyes Only by Gore), which is FILED UNDER SEAL.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the March 12, 2013 deposition transcript of Robert C. Gorman, M.D. (containing pages designated as Highly Confidential by Gore), which is FILED UNDER SEAL.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the July 31, 2012 deposition transcript of Kurt Amplatz, M.D. (designated as Confidential-Outside Attorneys’ Eyes Only by AGA), which is FILED UNDER SEAL.

11. Attached hereto as **Exhibit 10** is a true and correct copy of United States Patent No. 5,733,294 (“Forber”) produced by Gore as WLG00247861–WLG00247872.

12. Attached hereto as **Exhibit 11** is a true and correct copy of the U.S. Utility Patent Application for Patent Number 5,944,738 (“Prosecution History”) produced by AGA as AGA\_GORE0017704–AGA\_GORE0017797.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the January 14, 2013 Invalidity Expert Report of Dr. Robert C. Gorman (designated as Confidential – Outside Attorneys’ Eyes Only by Gore), which is FILED UNDER SEAL.

14. Attached hereto as **Exhibit 13** is a true and correct copy of the January 14, 2013 Invalidity Expert Report of Dr. Alex Javois (designated as Confidential – Outside Attorneys’ Eyes Only by Gore), which is FILED UNDER SEAL.

15. Attached hereto as **Exhibit 14** is a true and correct copy of International Publication No. WO 96/01591 dated January 25, 1996 (“Mazzocchi”), produced by AGA as AGA\_GORE00248428–AGA\_GORE00248494.

16. Attached hereto as **Exhibit 15** is a true and correct copy of U.S. Patent No. 5,192,301 (“Kamiya”), produced by Gore as WLG00247510–WLG00247522.

17. Attached hereto as **Exhibit 16** is a true and correct copy of an English translation of German Patent No. 42 22 291 (“Krmek”), produced by Gore as WLG00250652–WLG00250668.

18. Attached hereto as **Exhibit 17** is a true and correct copy of U.S. Patent No. 5,536,274 (“Neuss”), produced by Gore as WLG00247692–WLG00247704.

19. Attached hereto as **Exhibit 18** is a true and correct copy of U.S. Patent No. 5,861,003 (“Latson”), produced by Gore as WLG00247928–WLG00247941.

20. Attached hereto as **Exhibit 19** is a true and correct copy of the 1997 article by Melhem J.A. Sharafuddin, et al., entitled *Transvenous Closure of Secundum Atrial Septal Defects* (“Sharafuddin ‘1997 Article’”), produced by Gore as WLG00246817–WLG00246825.

21. Attached hereto as **Exhibit 20** is a true and correct copy of *Transcatheter Closure of Secundum Atrial Septal Defects Using a New Self-Expanding Nitinol Prosthesis*, Presentation, SCVIR 21<sup>st</sup> Annual Meeting, Seattle, Washington (“SCVIR Presentation”), produced by AGA as AGA\_GORE0580613–AGA\_GORE0580654 (designated as Confidential-Outside Attorneys’ Eyes Only by AGA), which is FILED UNDER SEAL.

22. Attached hereto as **Exhibit 21** is a true and correct copy of U.S. Patent No. 5,334,217 (“Das”) produced by Gore as WLG00246952–WLG00246971.

23. Attached hereto as **Exhibit 22** is a true and correct copy of the 1993 article by Gladwin S. Das, et al., entitled *Experimental Atrial Septal Defect Closure with a New, Transcatheter, Self-Centering Device* (“Das 1993 Article”), produced by Gore as WLG00246882–WLG00246893.

24. Attached hereto as **Exhibit 23** is a true and correct copy of the March 13, 2013 deposition transcript of Robert C. Gorman (containing pages designated Highly Confidential by Gore), which is FILED UNDER SEAL.

25. Attached hereto as **Exhibit 24** is a true and correct copy of documents produced by AGA as AGA\_GORE0006405–AGA\_GORE0006438 (designated as Confidential-Attorneys’ Eyes Only by AGA), which are FILED UNDER SEAL.

I state under penalty of perjury that the foregoing is true and correct.

Dated: April 10, 2013

s/ Peter M. Kohlhepp  
Peter M. Kohlhepp